

NOMINATIONS OF THE 112TH CONGRESS—SECOND SESSION

HEARINGS

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

FEBRUARY 7 THROUGH NOVEMBER 28, 2012

Printed for the use of the Committee on Foreign Relations



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COMMITTEE ON FOREIGN RELATIONS
112TH CONGRESS—SECOND SESSION

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NOMINATION OF DEREK J. MITCHELL

WEDNESDAY, JUNE 27, 2012

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

Hon. Derek J. Mitchell, of Connecticut, to be Ambassador to the Union of Burma

The committee met, pursuant to notice, at 10:35 a.m., in room SD-419, Dirksen Senate Office Building, Hon. Jim Webb, presiding.

Present: Senators Webb, Inhofe, and Rubio.

STATEMENT OF HON. JIM WEBB, U.S. SENATOR FROM VIRGINIA

Senator WEBB. The hearing will come to order.

The committee meets today to consider the nomination of Ambassador Derek Mitchell to be U.S. Ambassador to Burma, also known as Myanmar. The nomination of Ambassador Mitchell comes at a historic turning point in Burma's political transition and in our relations with that country. I would say this is one of those moments we will look back on clearly as a historic turning point.

And when such moments occur, history teaches us that we must act in a clear and decisive manner. I am pleased that the administration has responded to positive changes within Burma by upgrading our diplomatic relations to this proper status.

Three years ago when I visited Burma in August 2009, I can safely say that few were considering this prospect. My visit was the first visit to Burma by a Member of Congress or a national leader in more than 10 years. The country was locked in isolation, keeping its government, military, and people from exposure to the international community.

Aung San Suu Kyi remained under house arrest. Numerous other activists remained in prison. Conflicts with ethnic minority groups continued and challenged the unity of the country. The prospects for reform opening up and economic development looked bleak, while the potential for increased isolation and tighter sanctions seemed likely.

Yet during that visit, one could clearly see the promise of a different future. My own interactions with leaders in the military government, as well as with Aung San Suu Kyi, suggested that with

international support and faith, Burma could begin a different path.

In September 2009 with my support, the administration redirected U.S. policy to engage directly with the government, which began sending positive reciprocal signals. Then Foreign Minister Nyan Win visited New York for the U.N. General Assembly and made a private visit to Washington, DC.

The next year, the government announced that elections would be held. And on November 7, 2010, the country held elections for national and regional Parliaments with the participation of multiple political parties. By all accounts, these elections were neither completely free nor fair, but they represented a step toward a new system of governance, a step that many of Burma's regional neighbors have not yet taken.

Additionally, in March 2011, the military government officially transferred power to the civilian government led by President Thein Sein. In his first year of office, President Thein Sein released more than 620 political prisoners, released more than 28,000 prisoners, and reduced the sentences of all prisoners by 1 year. He began a series of economic reforms to prepare the country for trade and investment. Also during this time, the Parliament passed new labor and peaceful demonstration laws, amended the political party laws, and enabled the National League for Democracy to conclude that they would participate in the next elections.

During my August 2009 visit, I specifically observed to Burmese Government officials that at a time when Aung San Suu Kyi was still under house arrest, in order for elections in Burma to be perceived as credible, she and her party should be offered the opportunity to participate fully and openly in the process. Her release in November 2010, the government's compromise on the political party laws, and Aung San Suu Kyi's decision to participate in the April parliamentary election of this year demonstrates the political reconciliation taking place within that country.

Over the past year, many people across the world have followed Aung San Suu Kyi's dramatic transformation from a prisoner under house arrest, to a political candidate, and now to Member of Parliament. As an elected official in the national legislative body, she's now in a position to work within the government to formally affect the reconciliation process.

In the election, the NLD won 43 out of 45 seats, making it the largest opposition party in the Parliament, and placing it in a position to advance policies that support democratic transition.

While much needs to be done to solidify this transition, the combined efforts of President Thein Sein and MP Aung San Suu Kyi have moved the country forward toward promised democracy. I respect them both for their courage, and for their commitment to their country, and also for their foresight in accomplishing political reforms ahead of economic reforms. They have led the country on a different path than many of their neighbors in the region, and we all hope they remain successful in those efforts.

And I think a couple of comparisons are useful given the jurisdiction of this subcommittee. First, within China, democratic activists and ethnic minorities, such as Tibetans or Uighurs face the threats of constant surveillance, detention, and repression. The State

Department estimates in its "Country Reports" of 2011, "Tens of thousands of political prisoners remain incarcerated, some in prisons, others in re-education camps or administrative detention." Notably, China's Nobel Peace Prize winner, as opposed to Aung San Suu Kyi, Liu Xiaobo, remains incarcerated.

China has no free elections. Its leadership transition this year will not be influenced by popular vote. The Freedom House "Freedom in the World Report" for 2012 notes that China is "trending downward in its protection of political freedoms and civil liberties." In the 2012 "Freedom of the Press Report," North Korea is the only country ranked below China for its lack of freedoms of the press. Yet no one is advocating at this time that we impose economic sanctions on China.

The United States lifted its trade embargo against China 41 years ago. It continues to promote U.S. investment there. Last year, our trade totaled \$530 billion, making China our second-largest trading partner.

Second, consider Vietnam, with which I have had a continuous relationship since I was a 23-year-old Marine serving there during the war, and over the past 21 years have participated regularly and continuously in rebuilding the relations between our two countries.

The United States lifted its trade embargo in Vietnam in 1994. Our total trade has grown from \$6.9 million in 1993 to \$21 billion last year. Vietnam has never had popular elections for its leaders or allowed opposition parties. Concerns about censorship of the media, restrictions on the freedom of religion, or detention of political prisoners have not prompted the United States to restrict our trade with Vietnam. In fact, our policy has been based on the premise that increased trade will promote rule of law, transparency, and political freedom. Otherwise, we would not be negotiating a significant trade agreement with Vietnam at this moment, the Trans-Pacific Partnership.

This is not to single out China or Vietnam for opprobrium. On the contrary, it is simply to point out the need for consistency in the logic of those who argue for overly punitive restrictions as we develop our relations with Burma.

Let us not forget that this country has had two peaceful national elections within the last year, released hundreds of political prisoners, negotiated cease-fire agreements with 12 ethnic minority groups, reduced censorship of the media, and supported the development of an effective political opposition. This is a country whose political system remains a challenge, but where positive conduct calls for reciprocal gestures.

We should never take our concerns about political freedoms or individual rights off the table. We should make these concerns central to our engagement with all countries, including with Burma, as I mentioned. But we should also be promoting economic progress to sustain the political reforms that have taken place. It is time to make our policies internationally consistent with our principles.

As was evident during my visit to Burma in April of this year, there is general enthusiasm in the country, but there is also some skepticism inside Burma that Burma and the United States will be able to pull this thing off. People need to see and believe that the

government is working for them and that our government is sincerely dedicated to seeing further change.

I believe that President Thein Sein and other government leaders are sincere in their efforts, but they need our support in building a better foundation for the government and economy to deliver results to their people. For this reason, it is ever more important that our sanctions policies not inhibit this development. In fact, we should take pains to incentivize this development.

Initial steps have been taken. In February, the United States granted a partial waiver to allow international financial institutions to conduct assessment missions in Burma. On April 17, the Treasury Department issued a general license for educational and nonprofit institutions to support development and humanitarian projects. On May 17, Secretary Clinton announced that the ban on U.S. investments and export of financial services would be suspended, a move that has the potential to jump-start United States private sector engagement. However, more than 1 month later, the Treasury Department has not issued a general license for companies to begin this process.

In April before this subcommittee, OFAC Director Adam Szubin testified that the main categories of sanctions imposed by statute or Executive order can be lifted by the President via licenses, rescission of Executive orders, or issuance of waivers on national security. Further, he noted that Executive decisions to remove sanctions can still target and blacklist the assets or activities of people which they refer to as "bad actors" from their previous military junta so that they will not benefit from economic relations with the United States.

I believe this is the right approach to take. I have supported the steps taken thus far, but I believe more needs to be done. Time is of the essence here. If we do not act proactively and soon, we will lose a critical window of opportunity to influence development of financial governance inside Burma. It is critical to implement the decisions that have been announced and to continue to ease additional sanctions, such as the ban on imports.

Ambassador Mitchell, as the special representative and policy coordinator for Burma, has been well situated to observe and influence American policy across agencies during this period of transition. And now if confirmed, he will have a unique opportunity to strongly impact this new approach and to identify new means to incentivize and aid reform. I will look forward to hear your ideas and suggestions on this matter.

And now I would like to recognize Senator Inhofe.

**STATEMENT OF HON. JAMES M. INHOFE,
U.S. SENATOR FROM OKLAHOMA**

Senator INHOFE. Thank you, Mr. Chairman. I think you are aware of it, but they may not be, that as chairman and ranking member of EPW, Barbara Boxer and I are in the middle of our final negotiations right now as we speak on the highway reauthorization bill. So I am going to have to leave to go to that. But this is very significant. There are some things that I am concerned about, and so I thank you for holding this hearing.

This is kind of historic. This is the first time we will be sending an ambassador there in, what, 20 years, I guess, since 1992. So I want to welcome Ambassador Mitchell, and I understand that we are going to be able to talk in my office tomorrow. We can elaborate a little bit more on this subject.

But as you know, I am very interested in the ability of our American oil and gas industry to compete for business in Burma as soon as possible. Unfortunately, that has not yet happened, and in the meantime, European Union oil and gas companies have been there since the suspension of the EU sanctions against Burma last April. And, of course, China and Russia are already there.

Senator Webb and I wrote a letter on May 4, 2012, to Secretary Clinton, which stated that it would be a strategic mistake to exclude the U.S. petroleum industry in the suspension of U.S. sanctions in Burma. Her response on May 23 was encouraging, I thought anyway, when she wrote that certain sanctions would remain, but there was no mention that the American oil and gas firms would be excluded.

I have heard rumors, however, that there is an intent by this administration to "carve out" the American petroleum industry from doing business in Burma by slow rolling and issuing of licenses to this industry by the U.S. Treasury Office of Foreign Assets Control.

I reiterate that this or any other carve-out strategy would be a strategic mistake. I believe that U.S. companies, including the oil and gas companies, can play a positive role in the effort by demonstrating high standards and responsible business conduct and transparency, including the respect for human rights in Burma.

And I am sure that maybe you can, during your opening statement, could tell me whether or not you agree. And I hope so because this is a direct quote from the State Department, response to my question for the record from our hearing on Burma back on April the 26th. And I could not be more in agreement.

So I thank you again, Mr. Chairman, for holding this nomination. I look forward to hearing your opening statement here, but as I say, since we are in what I consider to be a very significant breakthrough with the highway reauthorization bill, I will have to be leaving early. Thank you, Mr. Chairman.

Senator WEBB. Thank you very much, Senator Inhofe.

Ambassador Mitchell, welcome. Just for the record, Ambassador Mitchell currently serves a special representative and policy coordinator for Burma with the rank of Ambassador.

Prior to this appointment, he served as a Principal Deputy Assistant Secretary of Defense for Asian and Pacific Security Affairs. He also worked as a senior fellow at the Center for Strategic and International Studies, a Special Assistant in the Department of Defense, a senior program officer at the National Democratic Institute.

Ambassador Mitchell has a master's degree from the Fletcher School of Law and Diplomacy, and a bachelor's degree from the University of Virginia.

And I understand your wife is here with you today. We would like to welcome her.

Ambassador MITCHELL. Yes, my wife is right here.

Senator WEBB. And appreciate both of your dedication to public service.

And, Ambassador, welcome, and the floor is yours.

**STATEMENT OF HON. DEREK J. MITCHELL, OF CONNECTICUT,
TO BE AMBASSADOR TO THE UNION OF BURMA**

Ambassador MITCHELL. Thank you very much, Mr. Chairman, Senator Inhofe, members of the committee. I am honored to appear before you today as the President's nominee to serve as the U.S. Ambassador to Burma, the first in more than two decades.

I am humbled by the confidence that President Obama and Secretary of State Clinton have shown in me with this nomination. Mr. Chairman, I know you take a particularly keen personal interest in the situation in Burma, as you have discussed, and I commend all you have done during your tenure to advance the relationship between our two countries.

Mr. Chairman, it was almost exactly a year ago that I sat before you and this committee as the President's nominee to serve as the first special representative and policy coordinator for Burma. I noted in my testimony then the many challenges facing Burma and our bilateral relationship. As you said, no one would have thought possible the remarkable developments that have occurred since then. Ongoing reform efforts have created an opening for increased engagement between our two countries, and instill the sense of hope among millions inside and outside Burma who have worked and sacrificed so much for so long for real change.

During my time as special representative, I traveled to the country many times and was able to have open and candid conversations with the government in Naypyitaw and representatives from all sectors of society. I was able to discuss a full range of perspectives on the complexity and diversity of the country, and I thank these interlocutors for their hospitality and their candor.

I have traveled throughout East Asia and Europe to share ideas and coordinate policy approaches. This included meetings with the many men and women in Thailand who have worked tirelessly along the border with Burma for decades to provide the humanitarian needs of Burmese migrants and refugees. With so much attention focused on developments inside Burma, we should not forget the work of these committed individuals.

I have, of course, spent many hours with Daw Aung San Suu Kyi. As we all know, Daw Suu Kyi remains a uniquely iconic figure inside and outside Burma. Upon helping bring her country to this point, she has now entered the field as an elected politician to help guide its next steps toward a secure, democratic, just, and prosperous future. If confirmed, I look forward to many more opportunities for discussions with her about her country and about how the United States can assist its progress going forward.

Perhaps the most important development of the past year, again, as you suggested, Mr. Chairman, in fact has been the partnership between Daw Suu Kyi and President Thein Sein. President Thein Sein has proved to be a remarkable figure. We should never forget to recognize his extraordinary vision and leadership and the many reformist steps he and his partners in government have taken over

the past year, steps that have clearly reflected the aspirations, indeed sacrifices, of millions of brave Burmese over many years.

At the same time, we have no illusions about the challenges that lie ahead. As Secretary Clinton has observed, reform is not irreversible, and continued democratic change is not inevitable. We remain deeply concerned about the continued detention of hundreds of political prisoners and conditions placed on those previously released, lack of the rule of law, and the constitutional role of the military in the nation's affairs.

Human rights abuses, including military impunity, continue, particularly in ethnic minority areas. Recent sectarian violence in Rakhine State demonstrates the divisiveness in Burma cultivated over many decades, if not centuries, that will need to be overcome to realize lasting peace and national reconciliation in the country.

We have been quite consistent and direct in public and private about our continuing concerns about the lack of transparency in Burma's military relationship with North Korea, and specifically that the government must adhere to its obligations under relevant U.N. Security Council resolutions and its other international non-proliferation obligations. If confirmed as Ambassador, I will continue to make this issue of highest priority in my conversations with the government and be clear that our bilateral relationship can never be fully normalized until we are fully satisfied that any illicit ties to North Korea have ended once and for all.

As the Burmese Government has taken steps over the past year, so, too, has the United States in an action-for-action approach. Each action we have taken in recent months has had as its purpose to benefit the Burmese people and strengthen reform and reformers within the system. This engagement should continue and expand. If confirmed, I will do my part in the field to support a principled approach that effectively marries our values with our broader national interests.

Most recently, as you know, Mr. Chairman, Secretary Clinton announced a broad easing of restrictions on new investment and the exportation of U.S. financial services to Burma. As she stated in May, "We look forward to working with the business sector as a new partner in our principled engagement approach." If confirmed, I will promote U.S. business interests in Burma while ensuring companies understand the complex environment in which they will be engaging, and the important role they can play in promoting American values and interests in the country.

It is clear to me from my discussions inside the country that the Burmese people admire U.S. products, standards, and principles. Staying true to them promises to serve both our public and private interests going forward. And I think that would address Senator Inhofe's questions about the carve outs and such. She had talked about a general license that hits all sectors equally, no carve outs according to sector.

Mr. Chairman, members of the committee, as the special representative and policy coordinator for Burma, I made it a priority to provide regular briefings and consultations on Capitol Hill. I also urged the Burmese Government to open its doors to congressional visitors so they may see the changes on the ground for themselves. I believe the administration and Congress have formed an effective,

bipartisan partnership on Burma policy. It is critical to maintain this partnership going forward. Should I be confirmed, I will make every effort to continue to reach out to interested members and staffs, and hope to see you all regularly on our doorstep in Rangoon.

Let me conclude by taking this opportunity to extend my utmost appreciation to my many partners within the executive branch with whom I have worked over the past year as special representative, including at USAID, Treasury, Commerce, DOD, the White House, and, of course, at State.

In particular, I want to commend the excellent career officers, interagency representatives, and locally engaged staff members at our Embassy in Rangoon whom I have gotten to know during my visits. This team has proved again and again to me that we have people of the highest quality in Rangoon and in the Department. They have responded superbly to a rapidly changing tempo of operations in the field, and have done so with professionalism and skill. If confirmed, I will make it a priority to ensure they have the tools and the direction necessary to continue serving our interests in Burma in an exemplary fashion and be proud of the work they do for our country every day.

Thank you for considering my nomination. I will look forward to your questions.

[The prepared statement of Ambassador Mitchell follows:]

PREPARED STATEMENT OF HON. DEREK MITCHELL

Mr. Chairman, and members of the committee, I am honored to appear before you today as the President's nominee to serve as the U.S. Ambassador to Burma, the first in more than two decades. I am humbled by the confidence that President Obama and Secretary of State Clinton have shown in me with this nomination. Mr. Chairman, I know you take a particularly keen personal interest in the situation in Burma, and I commend all you have done during your tenure to advance the relationship between our two countries.

It was almost exactly a year ago that I sat before you and this committee as the President's nominee to serve as the first Special Representative and Policy Coordinator for Burma. I noted in my testimony then the many challenges facing Burma and our bilateral relationship. No one would have thought possible the remarkable developments that have occurred since a year ago. Ongoing reform efforts have created an opening for increased engagement between our two countries, and instilled a sense of hope among millions inside and outside Burma who have worked and sacrificed so much for so long for real change.

During my time as the Special Representative and Policy Coordinator for Burma, I traveled to the country many times. The government in Naypyitaw provided excellent hospitality and demonstrated a willingness to have open and candid discussions with me on each occasion. I also want to thank the many other interlocutors—political party officials, civil society representatives, ethnic minority and religious leaders, former political prisoners, business executives, international diplomats and non-governmental representatives, and many local citizens—for opening their doors to me to discuss a full range of perspectives on the complexity and diversity of Burma.

I have also traveled throughout East Asia and Europe to share ideas and coordinate policy approaches. This included meetings with the many men and women in Thailand who have worked tirelessly along the border with Burma for decades to provide for the humanitarian needs of Burmese migrants and refugees. With so much attention focused on developments inside Burma, we should not forget the work of these committed individuals who help those in need. I am confident that these and many other committed individuals will join ongoing efforts inside the country when conditions are right.

And of course I have spent many hours with Daw Aung San Suu Kyi. As we all know, Daw Suu Kyi remains a uniquely iconic figure inside and outside Burma. Upon helping bring her country to this point, she has now entered the field as an elected politician to help guide its next steps toward a secure, democratic, just, and

prosperous future. I look forward to many more opportunities for discussions with her about her country and about how the United States can assist its progress going forward.

Perhaps the most important development of the past year, however, has been the partnership forged between Daw Suu Kyi and President Thein Sein. President Thein Sein has proven to be a remarkable figure. We should never forget to recognize his extraordinary vision and leadership, and for the many reformist steps he and his partners in government have taken over the past year. These actions have clearly reflected the aspirations, indeed sacrifices, of millions of brave Burmese.

At the same time, we have no illusions about the challenges that lie ahead. As Secretary Clinton has observed, reform is not irreversible, and continued democratic change is not inevitable. We remain deeply concerned about the continued detention of hundreds of political prisoners and conditions placed on those previously released. The rule of law requires an independent and effective judiciary. The constitutional role of the military in the nation's affairs is inconsistent with traditional democratic principles of civil-military relations.

Human rights abuses, including military impunity, continue, particularly in ethnic minority areas. Although there may be some hope for an end to the violence and establishment of serious dialogue on fundamental political issues, mutual mistrust between the government and ethnic minority groups runs deep and a long road lies ahead. Recent sectarian violence in Rakhine State demonstrates the divisiveness in Burma cultivated over many decades, if not centuries, that will need to be overcome to realize lasting peace and national reconciliation in the country.

We have been quite consistent and direct in public and private about our continuing concerns about the lack of transparency in Burma's military relationship with North Korea, and specifically that the government must adhere to its obligations under relevant United Nations Security Council Resolutions and its other international nonproliferation obligations. If confirmed as Ambassador, I will continue to make this issue of highest priority in my conversations with the government, and be clear that our bilateral relationship can never be fully normalized until we are fully satisfied that any illicit ties to North Korea have ended once and for all.

As the Burmese Government has taken steps over the past year, so too has the United States in an action-for-action approach. Each action we have taken in recent months has had as its purpose to benefit the Burmese people and strengthen reform and reformers within the system.

Most recently, Secretary Clinton announced a broad easing of restrictions on new investment and the exportation of U.S. financial services to Burma. As she stated in May, we look forward to working with the business sector as a new partner in our principled engagement approach. If confirmed, I will promote U.S. business interests in Burma while ensuring companies understand the complex environment in which they will be engaging and the important role they can play in promoting American values and interests in the country. It is clear to me from my discussions inside the country that the Burmese people admire U.S. products, standards, and principles; staying true to them promises to serve both our public and private interests going forward.

As the Special Representative and Policy Coordinator for Burma, I made it a priority to provide regular briefings and consultations with Capitol Hill. I also urged the Burmese Government to open its doors to congressional visitors so they may see the changes on the ground for themselves. I believe the administration and Congress have formed an effective, bipartisan partnership on Burma policy. It is critical to maintain this partnership going forward. Should I be confirmed, I will make every effort to continue to reach out to interested Members and staffs, and hope to see you all regularly on our doorstep in Rangoon.

Mr. Chairman, members of the committee, let me conclude by taking this opportunity to extend my utmost appreciation to my many partners within the executive branch with whom I have worked over the past year as Special Representative—including at USAID, Treasury, Commerce, DOD, the White House, and State. In particular, I want to commend the excellent career officers, interagency representatives, and locally employed staff members of our Embassy in Rangoon whom I have gotten to know during my visits. This team has proved again and again to me that we have people of the highest quality in Rangoon. They have responded superbly to a rapidly changing tempo of operations in the field, and have done so with professionalism and skill. If confirmed, I will make it my priority to ensure they have the tools and direction necessary to continue serving our interests in Burma in an exemplary fashion and be proud of the work they do for our country every day.

Senator WEBB. Thank you very much, Ambassador Mitchell. And since I know Senator Inhofe has to leave fairly quickly, let me begin with a question that I know that Senator Inhofe also will want to address. And then I will get into the more general policy issues that I would like to hear from you about.

In a recent speech before the ILO, Aung San Suu Kyi stated, and I am going to quote, that "The Myanmar Government needs to apply internationally recognized standards, such as the 'IMF Code of Good Practices on Fiscal Transparency.' Other countries could help by not allowing their companies to partner with the MOGE, the state-owned oil company, unless it signed up to such codes."

This raises a number of questions, first, about standardization of policy from the United States, and, second, about officials of a foreign government basically telling us where we should allow our economic interests to apply once we lift sanctions.

It is my understanding that the United States does not require countries to endorse this code or other standards as a prerequisite for U.S. investment. In fact, I asked my staff, you know, whether there were other countries that did not adhere to this code, and among them are China, New Zealand, Singapore, South Africa, and a number of other countries. So it does not seem like this is a standard United States policy as a prerequisite.

And then, second, there is a concern about our being told from the outside where we should allow our companies to invest, and that goes directly to Senator Inhofe's question.

So could you clarify this matter from your understanding of her statement and what our policy should be?

Ambassador MITCHELL. Thank you, Mr. Chairman. The issue of MOGE is one that we are looking very carefully at. We have concerns about this enterprise and its transparency and the corruption that is associated with it through reports that we have. And, of course, there is corruption and lack of transparency throughout the economy, the current economy in Burma. There are particularly concerns here with connections to the military and such.

We obviously are going to be careful, and we should be careful, as we stated, that however we engage, that we do so with the highest standards of transparency, that we are contributing to reform inside the country, that we are contributing to the highest values, and that we model the type of behavior that we like to see broadly by U.S. companies and by others.

This particular issue, when it comes to the general licenses that are being debated and discussed, obviously it is on the agenda and being looked at. There are no decisions made on this particular question. Clearly, we want to see others raising their level to the standards that not just the American companies so that we are on a level playing field. And as we looked at the general license, we understand the balance between competitiveness and the standards that we want to set.

So this is an ongoing question. There is nothing I can say here definitively on this because it is an ongoing internal discussion—interagency discussion that applies to the general license that will come out.

But, as I said before, we are not looking to exclude any sectors from this, but we are trying to make the balance very carefully.

Senator WEBB. Would you agree that standards that are applied should be the same standards that the United States applies in other countries?

Ambassador MITCHELL. Yes, absolutely. And I know under Dodd-Frank and under Cardin-Lugar as well, there are certain standards there that Dodd and Lugar is law, and we want to act consistent with that, and do not want to—we think that we are looking to do is complementary with those types of standards.

We are encouraged, I should also say—I mean, I want to add here that the Burmese Government has also taken steps itself in terms of transparency and talked about signing up for the EITI, the Extractive Industry Transparency Initiative. There is going to be a delegation coming in at the end of the July, and there have been public statements saying they are interested in more transparency in the extractive industries, including oil and gas.

It is very encouraging. I think it is our role to encourage that, to continue to educate. And I see things moving in the right direction. And Aung San Suu Kyi could certainly play a role inside the country in doing that so that, as you say, everyone has a level playing field.

But I would never dismiss what she says from our thinking. I mean, she is obviously a unique figure representing the people in the country, and she represents the values that we care about. So we will make our own decisions, but we take her thoughts on this as an ongoing conversation that we will have with her.

Senator WEBB. Thank you. I would—let me just summarize my—what I think is my agreement with you here. The United States sets the standards of transparency of our own business environment. You know, I took American companies into Vietnam for 2½ years in the mid-1990s. We had the laws that we have to obey. And it is a little delicate to say that an official from any foreign government should be telling us what sectors that we should invest in and not invest in.

And, Senator Inhofe, I know you have a question here.

Senator INHOFE. I appreciate that very much. Let me—first of all, Senator Webb and I signed a letter back on May 4. I would like to have that part of the record.

Senator WEBB. Without objection, it will be entered into the record at this point.

[The letter referred to follows:]

U.S. SENATE,
Washington, DC, May 4, 2012.

Hon. HILLARY CLINTON,
Secretary of State, U.S. Department of State,
Washington, DC.

DEAR SECRETARY CLINTON: We write you to express our strong belief that it is imperative for the United States to act in a clear, proactive manner to facilitate reforms in Burma through the lifting of economic sanctions. This recommendation is based on years of interaction with the countries of East Asia, including visits to the region and to Burma and meetings with its top leadership, as well as the testimony received at the East Asian and Pacific Affairs Subcommittee hearing of April 26, 2012, regarding "U.S. Policy on Burma."

We are mindful that the European Union (EU) announced on April 23, 2012, that it is suspending all sanctions against Burma, except for an arms embargo. Other countries that share our political philosophy, including Japan, have enacted similar measures. The countries of the Association of Southeast Asian Nations (ASEAN) have embraced recent political reforms in the country and are unanimously in favor

of immediate changes in economic policies. In short, the United States alone is left holding the most restrictive sanctions on Burma, banning visas, imports, exports, financial services, foreign assistance, and assistance by international financial institutions.

In response to questions raised at the hearing last week, Office of Foreign Assets Control Director Adam Szubin testified that the main categories of sanctions imposed by statute or executive order can be lifted by the President via licenses, rescission of executive orders, or issuance of waivers on national security. Further, he noted that executive decisions to remove sanctions can still target and blacklist the assets or activities of specific "bad actors" from the previous military junta so that they will not benefit from economic relations with the United States. These decisions do not require legislation; importantly, they can also be reversed, should the situation in Burma deteriorate.

We understand that as part of its review of sanctions policy, the Administration is considering lifting sanctions sector by sector, with the possibility that sanctions may be retained on individual industries such as petroleum. We believe that this would be a strategic mistake. The United States should not be picking winners and losers in our economic engagement abroad, but rather should be encouraging the business community as a whole to take on the risk of investing in human development in Burma. Their involvement can foster an open, transparent business environment that supports the rule of law and a level playing field for foreign investment.

Progress in Burma toward the goals we all share—greater freedom and prosperity for the people of Burma—is ultimately tied to the sanctions that are in place. Unlike some other countries in the region, most notably China and Vietnam, Burma's new leadership has moved forward with political change ahead of economic change. It is important to note that Daw Aung San Suu Kyi herself, speaking as an elected representative of the government of Burma, publicly announced her support for the EU's decision to suspend sanctions in response to democratic reforms in the country. The process of reform in Burma is still far from complete, but the positive steps that have been taken should be met with a positive response from our own government.

It is also important to note that the lifting of sanctions on Burma does not equal the establishment of full trading relations. The U.S. trade embargo with China was lifted 41 years ago, but permanent normal trade relations were granted only 12 years ago and continue despite ongoing concerns about the detention of political prisoners, repression of religious activity and lack of representative government. Burma has a long way to go, but its leaders—notably President Thein Sein and Aung San Suu Kyi—should be acknowledged for their concrete efforts to take the country in a different direction.

At this critical moment, it is imperative that our policy toward Burma be forward thinking, providing incentives for further reforms and building the capacity of reformers in the government to push for additional change. We urge the Administration to take action under its own authority, and seize this opportunity to support the Burmese people in their efforts to form an open, democratic government that respects and protects the rights of all.

Sincerely,

JIM WEBB,
United States Senator.
JAMES M. INHOFE,
United States Senator.

Senator INHOFE. All right. We will have a chance to talk about this tomorrow, but I want to get three questions just in the record here and get your responses. It will be very brief.

You talked a little bit about the state-owned oil company there, and I have heard some things concerning their lack of transparency. And I would only say, do you not think that our involvement, the United States, in oil and gas there could add transparency to the system?

Ambassador MITCHELL. I would say, Senator, yes. I think our engagement with them, again, through EITI and other methods can help model the type of behavior and help with this.

Senator INHOFE. I appreciate that. Now there is no one who has more of an intimate knowledge of Burma than you do and the people. And I would only say that if the United States Government

decided not to allow our oil and gas companies to operate there, would those resources go undeveloped, or would they—the companies, some other countries take up that slack?

Ambassador MITCHELL. Well, I think it has been demonstrated from the past the countries will likely take up the slack. But there may be some areas where the United States is uniquely able to exploit. But clearly there are other countries that are ready to pick up the slack.

Senator INHOFE. OK, I appreciate that. And last, do you agree that the U.S. oil and gas companies are more transparent and generally operate in a more free market manner than Chinese, Russian, and many other nationally owned oil companies?

Ambassador MITCHELL. Well, Senator, I am not an expert on that. I believe American companies overall exhibit higher standards than other countries.

Senator INHOFE. I think that is right, and that is good enough.

Senator WEBB. Thank you. Thank you, Senator Inhofe. And let me reclaim my time and ask a couple of questions before we go to Senator Rubio.

As you recall, in my opening statement I mentioned the comparison with political and economic situations in China and Vietnam. And, again, not as a suggestion that we impose sanctions on those two countries, but to try to put what we are doing here into some sort of consistent standard.

I actually held a hearing a couple of years ago on the—what I was calling the situational ethics in American foreign policy where we tend to focus on different countries in different ways, depending on power relationships and economic relationships and where we really need to have a common standard.

And I think we have something in the recent developments in Burma that is fairly unique, and that is that a governmental system has made a political decision to liberalize, to take a great risk before the economic systems are liberalized, before sanctions are raised. And as I mentioned, in China we lifted sanctions 41 years ago. We have proceeded under the hope and the assumption that liberalized economy might encourage a liberalized political system. I think the results in that so far are pretty mixed.

As I mentioned to you, Nobel Prize winner Liu Xiaobo, if I am saying his name right, is still incarcerated while, you know, we have had a positive journey with Aung San Suu Kyi. China has no free elections. Freedom House report for 2012 notes that China is trending down in terms of its political freedoms and civil liberties.

If you look at a listing of the 40 countries in East Asia and the Pacific, China is above only North Korea and actually tied with Burma in terms of media openness. And yet we are not suggesting, and I am not suggesting, that we should alter our economic policies. The same principle applies with the comments that I made about Vietnam.

So what are we doing here that would be inconsistent with what we are doing in China, places like China and Vietnam, and what is the rationale?

Ambassador MITCHELL. Well, it is hard for me in this position to comment on broader policy with Asia. It is not my role, I suppose. But I think you take each context individually. I think the Burma

context has been one where they had a closed system for a long time. They had a unique set of human rights challenges over a consistent period of time, and there are individuals like Aung San Suu Kyi there who have served as a beacon of change, and have represented a certain type of leadership inside the country.

And I think what we tried to do in Burma, we will have a debate on what succeeded and what did not. But I think we tried to have that system changed through pressure, and then over time through more engagement. I think the combination of the two has worked.

And I think, as I suggested in my testimony, and I think you also suggested, this is not irreversible, that we are only a year into this or several—you know, about a year into this. And we need to support the reformers, but also I think be very careful about rushing forward too fast. But at the same time, I think we are doing remarkable things and changing remarkably quickly ourselves and our policy.

So I think the path that we are on has proven to have been constructive, have served our interests, served our goals, served our values. And I do not see us moving too fast or too slow. I think it is just right, and I think we can—this is an ongoing issue. And I think if the Burmese continue, time will tell. If Thein Sein and his partners continue on this path and show more progress, then we will be looking at the infrastructure that is there of sanctions, regulations, and such over time.

Senator WEBB. Well, let me just respond with the personal view that I do not think that there has been any greater challenge in this area in my adult life than Vietnam. Burma has a situation where when we examine the inequities that occurred, we have the ability to personalize them because of Aung San Suu Kyi's unique situation. But look at the aftermath of the Vietnam war, with more than a million Vietnamese jumping into the sea, including my wife's family, by the way. A Stalinist state was clearly taking over that was subsidized by the Soviet Union. A tremendous division inside our own country that had to be overcome before we began to repair relations.

I was one of those—I think as you and I have discussed before—I was one of those who was very opposed to lifting the trade embargo against Vietnam until the mid-1990s after Japan lifted their trade embargo. And just kind of similar to what Senator Inhofe just said, after Japan lifted their trade embargo toward Vietnam, the sensibility of keeping one just lost its place. And the idea was for us to move in in a more proactive way, and I think it has had enormously positive results.

And there is a moment in time here, and I totally agree with you that we are on uncharted ground, but we have seen clear gestures from President Thein Sein and the people he is trying to work with, not just simply in terms of opening up trade relations, but in attempting to learn more about democratic systems from which they were basically firewalled for 20 years.

So I hope we are going to approach this issue with a sense of being proactive, of incentivizing the positive conduct so that we do not lose this moment here and then have people sitting around and saying, well, see, we said this was not real. I mean, this very well

could be a great change, and to the benefit of our country, their country, and also the region.

And let me ask you your thoughts in terms of the motivation of the present government. Do you see the main momentum in this present government as pro-democracy, pro-change?

Ambassador MITCHELL. Mr. Chairman, I think you have to pick and choose within the government. I think there is—the people I meet with, many of them seem quite committed to real change. The Lower House Speaker of the Parliament, Thura Shwe Mann, has been remarkable in his desire, for instance, to have exchanges with the Congress here. And he has gone around to India, and Britain, and, I think, Germany, and sought to learn about legislative processes and how to build an institution—a parliamentary institution. He has empowered that institution remarkably, more than we ever would have expected a year ago.

I think you have, again, the President himself and some other partners and certain ministries that are very much committed to a very progressive agenda. Where it leads we do not know. We just do not know. We do not know how long this leadership will last. We do not know. As you say, expectations are high. We do not know if they can fulfill their remarkable challenge or fulfill the goals given the remarkable challenges they face.

I completely agree with you, and this administration completely agrees with you, that this is a window of opportunity. And Aung San Suu Kyi, people in the opposition, former political prisoners have been released. They all say we must go in and support this government and Thein Sein to try to keep reform going. There is no question about that. I think we have taken those steps to empower the reformers, to help the people of Burma to try to institutionalize the change as best as possible.

But as long as the constitution is as it is, which I mentioned in my opening testimony, the military has a unique role to play, which is not consistent with democratic values. The civil-military relationship is not consistent with what you want to see in a democracy. Until those fundamentals change, you do have the question of whether this can revert or whether the military or others associated with it can reverse what is going on.

So we have to be careful, but I do not think there is any question through or rhetoric publicly or through our activities privately and otherwise that we are on the side of reform. We will partner with them. We will work with them on this, and I should say work with the international community, which is extremely important. It has a tremendous interest in helping Burma. We need to coordinate effectively so that we are doing it in the most productive way possible. And that has been my job, and that will continue to be my job if confirmed on the ground.

Senator WEBB. Would you say that the opposition parties in Burma are legitimately now a part of the government?

Ambassador MITCHELL. I do not know what legitimate would mean in this case. I mean, the elections in 2010 were not credible. There are political parties. I mean, they allowed the National League for Democracy to register, which is obviously a very positive move. There are some parties in some ethnic areas that were

not able to take part in even the most recent elections. In the most recent elections, just 7 percent of the legislature were up for grabs.

So there is still much more that needs to be done on the democratic development side and the civil society side, and, again, to really embed this. The rule of law, the balance of power, the activity of civil society, all this needs to be ingrained. The right things are being done, the right words. But time will tell whether it really takes hold or not.

Senator WEBB. Would you say there are legitimate opposition parties in China?

Ambassador MITCHELL. In China? I think I can say pretty honestly, probably not, no. There are not.

Senator WEBB. Well, we have something to build on, which is really the point I am trying to make. And I hope we do not lose this moment.

Senator Rubio.

Senator RUBIO. Thank you, Mr. Chairman. Ambassador Mitchell, welcome and thank you for your service to our country. I want to build on the topic you touched upon.

The length between economic openings and political openings are two separate things sometimes. And I think it is important to draw that distinction because I think where we can make the biggest influence, not just in Burma, but in all countries around the world, is toward this direction of a political opening. Ultimately it is the right of people to choose any economic model they want. But it is the political opportunities that are most important.

And I think is a unique opportunity for our country to use our sanctions as a leverage point, for lack of a better term, to help bring about or continue to encourage political openings. And so I wanted to walk through with you some of the challenges that we face in that regard with this specific case.

The first is, I was struck by a statement that President Sein made back in 2011 where he said there were no political prisoners in Burma, that all prisoners have broken the law. I do not think that would be our position.

What is the best estimate that we have in terms of the existence of political prisoners? Has that thought process changed? Where do we stand from his point of view and from our point of view on the existence of political prisoners and their prospects?

Ambassador MITCHELL. Thank you, Senator. The President last year did say the traditional view has been the traditional view of the government publicly. And he stayed consistent with that publicly. But to be honest, in private discussions with the government, they acknowledge, however they call them—prisoners of conscience—there are various words or phrases you can use.

We were talking in the same terms, and we saw that when we engaged with them on lists, the types of people we were talking about that were in because of political moves and such. They took it very seriously. They continue—from what I understand, even today they take it very seriously. They have released more than 500, up to 600 back last May, and then last October, and then this past January, including the most—the leaders of the movement.

Senator RUBIO. So how many are still in?

Ambassador MITCHELL. So we think there are still hundreds. There are different lists out there. Our list has several hundred in it, and we have been sharing this with the government. There is an exile group along the Thai border who has several hundred. I think theirs is in the 400 range. Aung San Suu Kyi has her list. And now we are all bringing this to the government.

Senator RUBIO. When you say "released," are they all back in the country? Were they exiled? What is the status of—

Ambassador MITCHELL. They are back in the country. They were not released unconditionally; they had for the most part, sign. But they are not released unconditionally in the sense that they were—there is still a section 403, I think it is. But they are actually acting as if they are normal citizens in the country. They are not restrained from—in fact, some of them ran for office last April. They are forming civil society.

Senator RUBIO. What are the conditions?

Ambassador MITCHELL. I am sorry?

Senator RUBIO. What are the conditions of their release?

Ambassador MITCHELL. Well, they just said—it was not unconditional in the sense of—if they have—if they commit another crime of some kind, they could be put back in prison and their sentence is resumed. That is on paper. We are watching that very closely. We are making it clear to them we want to see this unconditional. It is still a Damocles sword hanging over their head that is unacceptable that I think is a cloud that they feel psychologically. But in practice, we have been encouraged that they have not been constrained.

The one area I would say that is different, though, they have not been able to travel as freely as I think we would like to see.

Senator RUBIO. Within the country.

Ambassador MITCHELL. Well, no, I think outside the country.

Senator RUBIO. Oh, outside.

Ambassador MITCHELL. Some have tried to, and there have been difficulties getting passports here and there. But we have been working on this issue. It could be as much an issue of internal bureaucracy because they are not a very efficient government yet. But we will work on these issues. It is not over and done with just because they are released.

Senator RUBIO. The second issue, which is related to all of this, is just this terrible history of trafficking in persons that has existed there. Burma has historically been Tier 3 ranking. I think they have been upgraded to a Tier 2. I know the President last year—our President—suspended, if I am not mistaken—I had it here in my notes—suspended or waived Section 110 of the Trafficking Victims Protection Act with respect to Burma, meaning certain sanctions would not be applied.

I am curious to know two things, because it sounds from what I have read that what they are doing on trafficking is all aspirational. What specifically have they done? And it is not just trafficking. They have this horrible problem with child soldiers being conscripted into the armed services. I want to talk about the armed services in a moment.

But what exactly have they done that has been so promising to move them from a Tier 3 to a Tier 2 and lead to the waiving of

these Trafficking Victims Protection Act sanctions. What have they done? What exactly has happened with regards to child soldiers and trafficking and persons that justify this?

Ambassador MITCHELL. There is no question there continues to be severe challenges in the country on forced labor, and child soldiers, and the rest. And the Tier 2 Watch List does not mean that they are given a blank slate on this. What it says is they are moving in the right direction.

I was with Ambassador Cdebaca, who is our Ambassador responsible for trafficking in persons. I was with him in Burma in January. And he went in with very low expectations of what he could get from the Burmese, and it was remarkable actually. He talked about this when he released the most recent report, how they had done a lot internally. They had books and tabs of what they were doing on this issue, particularly on trafficking outside the country, of trafficking in Thailand, trafficking into China. But they also were looking at some issues of forced labor internally.

Since then, and this is what Ambassador Cdebaca had pressed very heavily. There was a law in place from 1907 when the British were there—it is colonial. It is the Village and Towns Act that gave the authority to the government to force labor, to requisition labor for official purposes. And what Ambassador Cdebaca said, you need to get rid of this law. This is official sanction for doing this. You need to get rid of the official sanction. And they did that. They did that in March. So it was actually a fairly substantial move where they took action to say it is not official policy. We are going to work on this.

And what has been very encouraging, I can tell you privately, that they were very happy about being moved up to the Tier 2 Watch List. They felt that was at least recognition that they were trying to deal with these issues. And they said next year we want to be off the list. How can we get off the list? So this is not done.

Senator RUBIO. What was our answer? What did we tell them when they said that?

Ambassador MITCHELL. Oh, we said we will work with you on the types of things we need to see, including on forced labor, including on child soldiers, including accountability for what is going on. So we were going to—we will say you want to get off the list.

Senator RUBIO. My time is running out. I had one more question, so I do not want to belabor this point. But I am very interested to know specifics of what they are doing, what they have done, and what we expect them to continue to do on this issue, because—and I am not accusing them of this. I am, quite frankly, not as aware, and that is why I am asking. But there are cosmetic things that people do to show, and then there are real things that they do on trafficking.

My last concern, and I think it is a broader issue, is the military continues to be unaccountable to the civilian leadership. It seems to me from my reading—I have never visited there—that the military in particular has and many officers in the military have benefited greatly from the crony nature of the economy.

Here is my concern, how big of an impediment in your observation is it to have this continued existence of this very powerful military not accountable to civilian leadership still be able to step in

at any moment and stop this progress? And what are your general thoughts on where that is headed, and how much willingness there is from the civilian areas in government to deal with it.

Ambassador MITCHELL. Well, as I said, it is imbedded in the constitution. As long as that is imbedded in the constitution, it raises questions about how far they are going to go for democratic reform. And they have said repeatedly privately and publicly we are committed to democracy and democratic change. But as long, as you suggest, that the military remains able to act with impunity and has a unique position in the affairs of the nation that is not democratic, then that raises questions. And I think that has been raised repeatedly as a concern, and we will continue to focus on that.

Having said that, I think we need to bring the military in and continue to talk to them about how they see themselves playing in this road to reform.

The final thing I will say on trafficking in persons, we can get Ambassador Cdebaca to come up and talk to you about his observations specifically on Burma, what he sees and what he is not seeing. I do not mean to whitewash. There are obviously a lot of concerns that remain, but it is just that they are making some progress, and we just took them out of a Tier 3 kind of closet and put them in a Tier 2 watch list so we can work more closely with them.

Senator WEBB. Senator Rubio, before we leave you, or before you leave us, I would like to add on to what you just said about this TIP list.

We have been working on this from our staff for 4 years now. And my strong view, and we have communicated to Secretary Clinton on more than one occasion, is that the entire process for developing these TIP lists is fundamentally flawed. What they do in their evaluations is they rank a country against itself year by year rather than compared to an international standard. And the benchmark that they use most frequently is the number of legal actions and the number of legal procedures that have been put into place in order to address the issue.

And you have these unexplainable disparities country by country where you have advanced governmental systems, like Singapore and Japan or Tier 2 Watch Lists, and then last year we had Nigeria, which was Tier 1, because in 1 year they had increased the number of legal actions rather than, you know, the actual state of these trafficking issues inside their country.

And we got literally a blast from the foreign ministry of Singapore about this when they were downgraded talking about how the United States had the audacity to give itself a Tier 1 with all of the trafficking in persons that goes on here with respect to immigration policies and these sorts of things.

So I would welcome the opportunity to have a discussion and show you what we have done on this in terms of remedial legislation. I think it is really—countries around the world do not understand the numbers that are coming out of it.

Ambassador, Senator Rubio mentioned another issue that I would like to get your clarifications on, and that is the numbers of prisoners and the release process, because from what we have been hearing is this present government has been attempting to address

these issues name by name. In other words, if they are given specific names, that they are doing for the most part a good job of trying to separate political prisoners from others who might have committed recognizable criminal offenses.

And, in fact, yesterday I was speaking with my friend and yours, Thant Myint, who is just back from a visit in Bangkok. And he was saying to me—back in Bangkok from a visit inside Burma. And he was saying to me that this is a priority over the next 2 months for their government to try to review the lists as they are being furnished in an attempt to clear the slate. Is that your impression of what is going on?

Ambassador MITCHELL. I have heard the same, and we are going to take advantage of that window to put our list forward and encourage them to take that step. I think it will be a very positive step.

And I do think there are people in the government quite serious about it. Whether they call them political prisoners or common criminals, we do not care. We want these people out because they should not be incarcerated.

Senator WEBB. You can legitimately in any country have someone who has committed acts that are not political acts and still be a political person who is incarcerated.

Ambassador MITCHELL. That is right. There are different definitions that people have, but I think we will stand by our definition of what we consider a political prisoner and seek to get them released unconditionally.

Senator WEBB. All right. I wish you the best. I am very grateful that we are going to have you, barring some unfortunate incident that I do not think is going to occur over the next 24 hours, I think we are going to be very grateful to have you serving as our Ambassador in this very unique and historic time.

It is our intention to try to move this nomination before the end of the week. For that reason, I am asking any members of the subcommittee who wish to get you questions for the record to do so by close of business today, and appreciate your rapid turnaround so that we might request that your nomination be moved before the end of the week.

Also we have statements from the Chamber of Commerce and the U.S. ASEAN Business Council that will be entered into the record at this time.

And, Ambassador, we again appreciate your willingness to continue in public service.

Ambassador MITCHELL. Thank you.

Senator WEBB. This hearing is closed.

[Whereupon, at 11:30 a.m., the hearing was adjourned.]

ADDITIONAL QUESTIONS AND ANSWERS SUBMITTED FOR THE RECORD

RESPONSES OF HON. DEREK MITCHELL TO QUESTIONS SUBMITTED
BY SENATOR RICHARD G. LUGAR

Question. What role, if any, can the United States play in Burma's national reconciliation? In the wake of ongoing change within Burma, please describe the strategy being implemented by the United States to communicate with each of the ethnic groups and their respective militias, and/or encourage such an effort by the United Nations.

Answer. Burma's national reconciliation, which will address key political, economic, and cultural issues among the central government and ethnic groups, must be driven by the Burmese people themselves to be successful in the long term. Secretary Clinton, myself, and other U.S. Government officials have met with ethnic groups and their representatives in Burma, throughout the region, and in the United States. Our embassies in the region maintain regular contact with U.N. agencies, international NGOs, and ethnic groups along Burma's borders and inside the country to gauge their concerns and seek current information on the ongoing political process and cease-fire negotiations.

We also meet with Burmese Government officials and consistently convey at the highest levels that, while we understand the sensitivity of the national reconciliation questions, the United States stands ready to assist in effective and appropriate ways to establish a durable solution for peace. We also strongly encourage the Government of Burma to work cooperatively with ethnic groups to find peaceful, lasting solutions to their conflicts and, in the meantime, to negotiate cease-fire agreements by which all sides will abide.

Additionally, in light of ongoing conflict and tensions in ethnic minority areas, including Kachin State and Rakhine State, we urge the government to allow unfettered humanitarian access to Internally Displaced Persons (IDPs). We regularly contact U.N. offices and local and international NGOs operating in Burma to provide assistance to those most in need. In March 2012, we provided \$1.3m to UNHCR to assist Kachin IDPs in the areas of protection, nonfood items, and shelter/camp management. We also collaborate closely with our international partners and the donor community to work with the Burmese Government and ethnic groups to encourage and strengthen the cease-fire negotiations and political dialogue.

Question. Have United States officials raised concern with North Korea regarding the country's military and technological exports to Burma, and collaboration with the Burmese military? Are submarines among the exports from North Korea to Burma?

Answer. In our broader bilateral engagement with the North Koreans and with regional partners, we have consistently raised our concerns on proliferation activities. We also consistently raise with the Burmese Government at the highest levels our concerns over military ties with North Korea, and stressed the importance of full and transparent implementation of UNSCRs 1718 and 1874 which prohibit all purchases of military equipment and weapons from North Korea. We take all reports of military trade between the two countries very seriously. We would be happy to offer you a classified briefing to fully address any questions regarding military ties between Burma and North Korea.

Question. Have United States officials raised concerns with China regarding North Korea's military and technological exports to Burma, and collaboration with the Burmese military? Have United States officials raised specific concerns to China regarding reports of transshipment of military-defense cargo to Burma from North Korea via China?

Answer. We regularly, and will continue to, address a broad range of proliferation issues, to include links to Burma, with our partners in the region, including China.

Question. Please provide a list of political prisoners (or combination of lists of prisoners), which the United States uses as a point of reference in discussions with the Government of Burma.

Answer. We have attached a current list of political prisoners. We consulted with key political parties and civil society organizations in Burma, including members who are former political prisoners and will continue to have ongoing conversations to ensure we have the most accurate and up-to-date information.

[EDITOR'S NOTE.—The list of political prisoners mentioned above was too voluminous to include in the printed hearing therefore it will be maintained in the permanent record of the committee.]

Question. When does the United States anticipate that IAEA officials and inspectors will travel to Burma?

Answer. We have regularly urged Burma to improve its cooperation with the IAEA, particularly in support of concluding an Additional Protocol (AP). Universalization of the AP was an important aspect of the 2010 NPT Review Conference Action Plan, which was adopted by consensus and with Burma's support. In addition, the same commitment was made by the 10 ASEAN States at 2011 U.S.-ASEAN's Leaders Summit. While the Government of Burma has indicated a willing-

ness to consider an AP, we have no indication that it has initiated the necessary consultations with the IAEA.

Question. How do you envision American institutions of higher learning contributing to the overall reform process within Burma?

Answer. American institutions of higher learning, as well as private foundations and other nongovernment entities, can effectively contribute to the overall process of reform in several ways. Many such institutions are already contributing. One way is to establish faculty exchanges to send American professors to Burma and bring Burmese professors to the United States in order to modernize and reinvigorate the Burmese system of higher learning. Another way is to promote leadership and management training for Burmese diplomats and government officials to develop their capacity to lead both in Burma and at the international level. Additionally, hospital to hospital exchanges or collaborations help ensure the availability of high-quality medical treatment for the people of Burma.

The State Department has been encouraging American institutions to make their own fact-finding trips to Burma to assess opportunities to assist on higher learning activities. Many U.S. educational institutions are considering establishing campuses in Burma or partnering with Burmese educational institutions. We will work, along with our Embassy in Rangoon, to facilitate their efforts. We encourage these institutions to take into serious consideration the views of their Burmese counterparts who, for example, have identified a great demand for English Language Teaching.

Question. What are the benchmarks that when achieved, the United States will favor international financial institutions providing technical and financial assistance to the Government of Burma?

Answer. The administration has carefully calibrated its approach on international financial institutions (IFIs) under the "action for action" framework articulated by Secretary Clinton to encourage continued progress on economic and political reforms in Burma. The Secretary of State waived the portion of the Trafficking in Persons (TIP) sanctions that applied to IFI assistance, which remains operable until September 30, 2012. The TIP waiver gave U.S. Executive Directors (USEDs) at the IFIs limited flexibility to support those assessment missions and limited technical assistance to Burma that did not require a Board vote. Burma moved up this year in its TIP Ranking from Tier 3 to Tier 2 Watch List and will not be subject to TIP sanctions in 2013.

However, USEDs are currently directed to vote "no" on IFI financial assistance to Burma, based on existing legislation, including several Burma-specific laws (section 570 of the Burma Freedom and Democracy Act and section 7044 (b) of the FY12 Foreign Operations Appropriations Act). The FY12 Appropriations Act contains no criteria for Burma to meet, nor does it provide waiver authority of any kind for these laws.

We assess that the critical priorities for IFI engagement with Burma at this time include assessment, technical assistance, and capacity-building, but that conditions are not yet appropriate for IFI lending to Burma. IFI engagement in Burma, which Aung San Suu Kyi supports, can be a valuable tool of United States foreign policy, particularly in encouraging economic reform in Burma.

Other major shareholders are already beginning to discuss the preparation of multilateral development bank (MDB) country assistance strategies, and options for the clearance of Burma's arrears to the MDBs and to certain bilateral creditors. Although the United States will vote "no" on any IFI operations that require a Board vote, the United States cannot unilaterally prevent the IFIs from engaging with Burma, and a strong international consensus is emerging in favor of deeper IFI engagement to cement the positive direction of economic reforms undertaken by President Thein Sein.

The administration is not seeking congressional action on directed vote mandates at this juncture, but it is possible to envisage a future need for the United States to effectively guide IFI engagement in Burma in a manner that meets our shared objectives through the flexible exercise of its voting power.

Question. What evidence exists that Burma's Commander in Chief, Gen. Min Aung Hlaing and his senior officers support political reform in Burma and are willing, at some future time, to accept civilian control over the military and relinquish the military's privileged status as provided for in Burma's constitution?

Answer. During my time as Special Representative and Policy Coordinator, I met with Commander in Chief Min Aung Hlaing, Defense Minister Hla Min, and other senior military officials. In those discussions, these officials expressed support for the political reform process initiated by President Thein Sein. Min Aung Hlaing stressed his intention to make the military a responsible, respected, and profes-

sional force, and stated that the armed forces no longer wanted responsibility for governing the country. While the internal dynamics and debates within the military are relatively opaque, and we have ongoing concerns about the authority granted to the military under Burma's constitution, to date, the military has not intervened or taken any other overt action to derail the political and social liberalization that has taken place over the past year.

There are no guarantees, however, that the military in the future will remain supportive of continued political reform, accept de facto control of its affairs by civilian authorities, or relinquish its privileged status under Burma's Constitution. Such steps will be necessary for a full democratic transition and will continue to be factors in U.S. assessments of Burma's reform process.

Question. What are the benchmarks that when achieved, the United States will initiate military-to-military interaction with Burma? Once those benchmarks are met, what will be your recommendation(s) as to the specific type of military-to-military contact?

Answer. Increased military-to-military ties with Burma would enable greater insight into the Burmese military, and offer opportunities, consistent with U.S. values and interests, to promote a professional, respected, and responsible military force. We have started this process of engagement by renewing joint cooperation on efforts to recover remains of U.S. personnel from the World War II era, suspended in 2004, and the visit of a National War College student delegation to Burma in early May.

Continued violence and human rights abuses against civilians, including women and children, in Kachin and Shan states, and questions about the Burmese military's relationship with North Korea are the major constraints on further development of military-to-military ties.

Question. What is the timetable for the completion of guidelines for a general license to authorize new investment and the waiver needed to authorize financial transactions with Burma—as announced by the administration last May?

Answer. We are moving forward through an interagency process to complete the steps necessary to implement President Obama and Secretary Clinton's May 17 announcements on easing sanctions on the export of financial services and on new investment. Procedurally we expect to take several steps to ease the ban on new investment in Burma, including by exercising statutory waiver authority and issuing a general license to authorize such investment. We will also seek a separate general license to ease the prohibition on the exportation of financial services to Burma.

We seek to ensure our sanctions easing measures support our overall policy objectives of transparency and accountability and are comprehensible for both the Burmese people and the business community. We will continue to pursue a calibrated approach in our engagement with Burma and will work to promote responsible investing practices.

Question. What is the administration's perspective on the status of the Rohingyas? What steps have been taken to address the challenges of injury and death to the Rohingyas resulting from the policies of the governments of Bangladesh and Burma? By name and title, who are the lead State Department officials on matters related to the Rohingyas?

Answer. The administration has, and will continue to, express serious concern at the continuing discrimination, human rights violations, violence, displacement and economic deprivation affecting numerous ethnic minorities in Burma, including the stateless Rohingya ethnic minority in northern Rakhine state. We have consistently called upon the Government of Burma to take immediate action to bring about an improvement in their situation, to recognize the right of the Rohingya to nationality, and to protect their human rights.

Soon after sectarian violence broke out in early June between Buddhist ethnic Rakhine and Muslim minorities, including ethnic Rohingya, in Burma's Rakhine state, Secretary Clinton issued a statement condemning the violence and urging authorities to conduct a timely investigation into attacks and a dialogue among all key stakeholders to promote greater religious and ethnic tolerance and understanding.

Embassies Rangoon and Dhaka continue to work in close coordination to monitor the situation in Rakhin state and along the Burma-Bangladesh border and have met with relevant ministers from the respective governments to note our concern and to encourage both governments to work with the international community to restore peace and to provide protection and assistance to those individuals fleeing the violence. We continue to urge the Government of Bangladesh to respect the principle of nonrefoulement as these persons may be refugees or have other protection needs.

We remain deeply concerned and, and if confirmed, I will continue to call for restraint, an end to violence, and the upholding of principles of nondiscrimination, tolerance, and religious freedom.

In the State Department, several bureaus and offices track the Rohingya population in Burma and the region, including the Bureaus of East Asia and Pacific Affairs; South and Central Asia Affairs; Population, Refugees, and Migration; Conflict and Stabilization Operations; and Democracy, Human Rights, and Labor. Senior principals including Assistant Secretary Campbell, Assistant Secretary Posner, Assistant Secretary Barton, and Assistant Secretary Richard, office directors, program officers, and embassies related to the above-mentioned offices work in coordination with the international community to not only address the current violence, but also to develop comprehensive durable solutions to address the Rohingya situation.

Question. Officials of Thailand have discussed the forced return of thousands of displaced person to Burma who fled to Thailand. Have U.S. officials discussed this situation with Thai authorities and what is the present position of the Thai Government?

Answer. U.S. officials in Thailand and Washington have consistently reinforced with Thai leaders our firm belief that refugees from Burma should only return voluntarily, and when they can do so safely and in dignity. Secretary Clinton raised this issue with Foreign Minister Surapong on June 12. The Foreign Minister, as well as Thai officials from both civilian and military agencies, confirmed to us that the Thai Government will avoid the forcible return of Burmese refugees back to Burma, that there is no timeline for return, and return will only occur when conditions are right in Burma. We will continue to monitor the situation and reinforce our message as appropriate.

Question. Some Burmese leaders have been accused of committing or ordering international crimes of humanity against ethnic minorities within Burma. How should these allegations be addressed to ensure accountability and to facilitate reconciliation within Burma? Does the administration support a Commission of Inquiry?

Answer. We consistently prioritize concerns with human rights violations and, in our engagement with Burmese Government officials and members of civil society, we have underscored the importance of establishing a mechanism for accountability. We view the establishment of a national human rights commission in Burma in September 2011 an important first step, and we have encouraged the government to draw on international expertise to ensure the impartiality and the credibility of the commission.

As Secretary Clinton noted during her November visit to Burma, the United States supports an appropriate mechanism to ensure justice and accountability. We believe it is important to support the Burmese Government, the political opposition, and civil society in pursuing their own approach toward achieving these objectives. An inclusive process that comprises key Burmese stakeholders is required for a sustainable mechanism to ensure accountability.

Question. Has the United State held discussions with the Government of India and the government of Mizoram state to help identify and address protection of the Chin?

Answer. India is not a signatory to the 1951 U.N. Refugee Convention, but all refugees, along with foreign residents, tourists, and migrants, are covered by the Foreigners Act. The Indian Government does not afford refugee status to any group.

U.S. Consulate officers from Kolkata have met in Kolkata and in Aizawl with members of Burma's ethnic Chin population and with groups assisting the Chin in Mizoram. During visits to the state, consulate officers consistently raise the Chin issue with members of local government and civil society. Most recently, the Consul General used a June meeting with the Chief Minister to encourage the government of Mizoram and the Government of India to provide more assistance to this population.

The State Department will continue to engage with UNHCR on indentifying durable solutions for Burma's ethnic Chin, including resettlement.

RESPONSES OF HON. DEREK MITCHELL TO QUESTIONS SUBMITTED
BY SENATOR MARCO RUBIO

Question. Beyond the anecdotes provided in the 2012 Trafficking in Persons Report, what specific steps or measures has the Burmese Government taken to move from Tier 3 to Tier 2 Watch List in the 2012 TIP report?

Answer. Burma's record on human trafficking, including forced labor and the use of child soldiers, has been a concern for many years. The ILO and other international observers assessed that the government had used the colonial-era Village Act and Towns Act of 1907 to legally sanction forced labor. The government's moves to repeal these antiquated acts, however, and to replace them with a new law that explicitly prohibits forced labor as a criminal offense, were in direct response to U.S. Government requests, and attest to a stronger commitment to cooperate more closely with the United States on human trafficking issues.

Several other significant and unprecedented steps in advancing political reforms corrected Burma's legal framework vis-a-vis human trafficking:

- An interministerial working group on trafficking in persons introduced best practices through collaboration with international partners. As a result, we have seen improved victim protection measures.
- Authorities undertook significant efforts to address the cross-border sex trafficking of women and girls; inaugurated a national hotline to respond better to public complaints of all forms of human trafficking that has since led to the rescue of 57 victims of trafficking; and launched an antitrafficking Web site in February 2012.
- Earlier this year, the government signed a framework agreement with the ILO that commits it to developing and implementing an ambitious new plan of action to eradicate forced labor in the country by 2015.

The government's cooperation with the ILO also achieved progress in addressing conscription of child soldiers in the Burmese military. Of 324 complaints of forced labor in Burma that the ILO received in 2011, 236 involved alleged conscription of children for military service. For the first time in several years, the Ministry of Defense provided data on military personnel disciplined for forced labor offenses: four officers and 37 enlisted personnel were punished for "improper recruitment."

The Ministry of Labor also took a number of unprecedented steps to prevent forced labor of Burmese citizens at home and abroad. In late 2011, the Deputy Minister of Labor negotiated with the Thai Government for the placement of a labor attaché at the Burmese Embassy in Thailand and the opening of five labor assistance centers in Thailand. The centers, which the Thai Government has not yet approved for opening, will help expatriate Burmese workers with obtaining Burmese identity documents and other assistance.

Through several visits by the Special Representative and Policy Coordinator for Burma, Ambassador Derek Mitchell, and Ambassador CdeBaca from the Office to Monitor and Combat Trafficking in Persons, the United States engaged relevant ministries and security forces in Burma to express our concerns and guide the government toward progress in meeting achievable goals.

We recognize there is still much to be done, and Burma's Tier 2 Watch List ranking reflects serious deficiencies. We also remain concerned with continued reports on conscription of child soldiers. We will build upon the foundation we have laid with the government to cooperate on these issues as well as collaborate with Aung San Suu Kyi, who has highlighted the issue of human trafficking as an essential issue to resolve.

Question. What are the measures that the Burmese Government must meet for Burma to remain off the Tier 3 list in the 2013 TIP Report?

Answer. In order to avoid a Tier 3 ranking in the 2013 TIP Report, the Burmese Government must avoid backsliding on its improvements to date and begin to make progress on implementing a series of recommendations that the Department of State provided in the 2012 TIP Report:

- Complete and implement the terms of the International Labor Organization (ILO) action plan for the elimination of forced labor offenses perpetrated by government employees, particularly military personnel.
- Take additional measures to confront the unlawful conscription of children into the military and ethnic armed groups, including the criminal prosecution and punishment of offenders.
- Increase efforts to investigate and sanction, including through criminal prosecution, government and military perpetrators of internal trafficking offenses, including child soldier recruitment and other such crimes.

- Actively identify and demobilize all children serving in the armed forces.
- Continue improving U.N. access to inspect recruitment centers, training centers, and military camps in order to identify and support the reintegration and rehabilitation of child soldiers.
- Cease the arrest and imprisonment of children for desertion or attempting to leave the army and release imprisoned former child soldiers.
- Enhance partnerships with local and international NGOs to improve victim identification and protection efforts, including victim shelters.
- Develop and implement formal victim identification and referral procedures.
- Focus more attention on the internal trafficking of women and children for commercial sexual exploitation.

Question. At the hearing, you mentioned an interest by Burmese authorities to take measures that would lead to their removal from the TIP Report's Tier 2 Watch List. What specific measures would the Department of State expect Burma to take in order to accomplish this? What type of monitoring will the State Department do to ensure these measures are followed?

Answer. Each Trafficking in Persons Report narrative contains specific recommendations for a government to consider implementing over the coming year toward achieving a favorable tier ranking. In addition to the country-specific recommendations within the TIP Report narrative, the Department of State provided the Government of Burma with an action plan that is derived from these recommendations. The State Department delivered the action plan to the Government of Burma on June 19. Both the action plan and accompanying recommendations are aimed at providing authorities with guidance related to the minimum standards outlined in the Trafficking Victims Protection Act. In order for Burma to be removed from the Watch List, its Government must make progress on these recommendations.

To help the government achieve its goal of a more favorable tier ranking, we will build on our strengthened engagement, including upgraded diplomatic ties, to work with relevant ministries and authorities on the necessary criteria it must address. We will outline procedures and recommendations from our Trafficking in Persons report and seek progress on core concerns specific to Burma. The Department's Office to Monitor and Combat Trafficking in Persons, in partnership with the Bureau of East Asian and Pacific Affairs and the U.S. Embassy in Rangoon, will assess the Government of Burma's progress in achieving the action plan items through direct discussions with authorities, soliciting feedback from nongovernmental organizations and monitoring media coverage of these issues.

PREPARED STATEMENT OF THE U.S. CHAMBER OF COMMERCE

The U.S. Chamber of Commerce, the world's largest business federation, representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as State and local chambers and industry associations, is pleased to have the opportunity to submit this statement for the record to the Senate Committee on Foreign Relations in connection with today's hearing on the nomination of Derek Mitchell to be United States Ambassador to Burma.

The Chamber has been very encouraged by political and economic developments in Burma over the past year. Badly needed political and economic reforms in that country are moving forward, in many cases at a pace faster than most observers had expected. Following the landslide victory by the opposition National League for Democracy in the April 1 elections, there is, for the first time in many years, a genuine sense of hope for the future.

It is patently in U.S. interest that the process of reform and liberalization in Burma continue. The Chamber has therefore strongly supported the U.S. Government's responses to developments there, including Secretary of State Hillary Clinton's visit last December, the upgrading of diplomatic relations, and the announcement that some U.S. economic sanctions will be eased.

Many observers question whether the changes in Burma are irreversible. That is the wrong question; little in this world is truly irreversible. The momentum is currently behind reform, but the process will not be linear. As with most major changes, reform of the economic and political system in Burma is fraught with formidable challenges, and there is ultimately no guarantee of success. Therefore, U.S. policy should be geared toward supporting and strengthening the hand of the reformers. Strategic engagement by the U.S. Government, as well as by leaders from the nonprofit and business sectors, is vital to solidifying and broadening these reforms.

For these reasons, we are pleased that the Senate is considering the nomination of Derek Mitchell as U.S. Ambassador to Burma. It has been 20 years since the United States last had an Ambassador in Burma, and his appointment further demonstrates U.S. sincerity in its commitment to ongoing engagement with that country. If we are to have meaningful dialogue and interaction with Burma, there is no substitute for the presence of an ambassador.

U.S. Chamber representatives visited Burma last month and had discussions in Naypyidaw with a broad range of officials, including the Ministers of Finance, Health, Construction, National Planning, and Energy, and the Vice Ministers of Commerce and Railways. In Rangoon, the Chamber met with economic and political advisors to the President, among others.

The message was clear and consistent: They want U.S. investment because they recognize that U.S. companies bring with them a respect for the rule of law and high standards of corporate governance. Leaders understand that these are essential elements for sustained economic growth.

In those meetings, we detected no illusions on the part of anyone we met about the daunting challenges the country faces. Burma is woefully short of technical skills as well as skilled manpower across every part of the economy from the health care system to the financial sector. They need and want help, and they know it, and they freely admit it. And the United States is in a position to offer that help.

Its realization of the difficulty of the path forward has not deterred Burma from moving down that path. Indeed, the commitment to reform is genuine, and in the view of the Chamber executives who recently visited, it is not a question of pro- vs. anti-reform, but rather a question of the pace of reform. The pace of reform relates directly to the question of capacity.

U.S. business community involvement can play a crucial role here. U.S. companies not only create jobs, but they bring capital, technology, training, community development, high standards for protecting the environment and respecting human rights and the rule of law that will build a foundation for sustained economic growth. Without this foundation, development and improved standards of living for the people of Burma (or any other country) is simply not possible.

How do we build this foundation? Most immediately, the lifting of financial services and investment sanctions—as promised by Secretary Clinton on May 17—will be essential to the sustainable expansion of the Burmese economy and the successful operation of any U.S. business effort. Currently, U.S. companies are unable to conduct many basic research efforts that would enable them to even formulate plans to operate there. Lifting the financial services and investment ban is a prerequisite for enabling any U.S. business to work in Burma. A basic financial services infrastructure is a prerequisite for creating an environment in which businesses can invest, and where other promising sectors, such as tourism, can flourish.

Secretary Clinton's announcement generated great enthusiasm on the ground in Burma, as the Chamber executives who were there at the time saw firsthand. However, it is disappointing that the announcement has not been followed by action. Movement is needed quickly to issue a general license that is needed to authorize new investments in, and financial transactions with, Burma, consistent with the Secretary's May 17 announcement.

This license should apply across the board to all industry sectors and should avoid burdensome reporting requirements or onerous preconditions on any sector. For example, suggestions to restrict engagement with Burma's State-owned oil company, Myanmar Oil and Gas Enterprise (MOGE) would result in a de-facto investment ban. In Burma, like many other countries around the globe, foreign investors are legally required to enter into joint ventures with state-owned companies. Our standard should continue to be to limit engagement with those entities on the prescribed list of prohibited entities and persons known as Specially Designated Nationals (SDN) who have been unjustly enriched in the past, have violated other statutes such as counterterrorism, money laundering, proliferation, counternarcotics proscriptions or who are owned by the military. MOGE has not been listed for any of these violations and is not controlled by the military. Instead, MOGE reports to the civilian-controlled Ministry of Energy.

Effectively prohibiting American companies from dealing with MOGE will only ensure that non-American companies continue to capture additional energy projects. It will not lead to greater transparency over natural resource revenues.

American companies have been at the forefront of a decade-long global effort to promote greater transparency around the flow of natural resource revenues, i.e. the Extractive Industries Transparency Initiative (EITI). Some 35 nations are now implementing countries in this initiative and participate with other stakeholders from industry, international financial institutions and civil society; 14 countries have achieved "compliant" status with the EITI disclosure standard. The United States

has recently applied to join EITI. American companies can and will encourage Burma, as they have encouraged other countries, to join this initiative, which provides the capacity not only to implement the disclosure standard, but to develop the institutions to manage public expenditures over the long term. If the U.S. Government goal is to promote transparency, then our policy should strongly support U.S. companies entering the natural resource space, and engaging with MOGE and the government to embrace EITI.

But these are only first steps. What is needed is a broader and longer term vision about the future of the U.S. relationship with Burma. That vision must address how we can sustain support for a reform process that will likely take many years, see fits and starts, and encounter challenges both foreseen and unforeseen.

That vision must also consider a plan for more comprehensive easing of economic sanctions. Over the past few months, all the major economies that had sanctions in place against Burma have now suspended or eliminated them. A sanctions regime that was multilateral is now unilateral.

As the U.S. Chamber of Commerce has pointed out repeatedly, tying the hands of U.S. companies simply ensures that our competitors fill the void, as they are already doing. As a result, the jobs which could go to American workers will instead go to their counterparts in Asia, Europe, and elsewhere. U.S. companies are already starting from a disadvantage, as numerous entities from other nations have substantially stepped up their activity in recent months.

For example, the AFP noted in a June 19 article that Myanmar has recently signed a series of oil and gas exploration deals with companies from Hong Kong, Switzerland, Malaysia, India, Thailand, Indonesia, and Russia. In recent weeks, a flurry of business delegations from Japan, Singapore, and many European countries have visited the country. Not only have other governments eased sanctions, but many, such as those in Japan and Europe, in fact are helping and partnering with their industries to get them into Burma. Similar efforts on the U.S. side, perhaps led by the Commerce Department, would be helpful.

Ironically, slow-walking the implementation of the administrative steps necessary to suspend sanctions on new investment and financial transactions will not increase transparency, advance respect for human rights, or slow economic activity. It will only mean that U.S. companies that push for better governance and transparency are not involved in shaping the corporate culture and norms that are formed as Burma's private sector is invigorated.

Moreover, the easing announced last month does not limit U.S. policy options. The United States can renew the investment and financial services sanctions should conditions in Burma deteriorate. Other sanctions remain in place and in some cases would require legislative action to undo. Thus, their removal will be neither quick nor easy.

In addition, the SDN list provides a way to ensure that business dealings do not enrich those parties responsible for Burma's decades of suffering, and that those honest entrepreneurs seeking a way to connect with the outside world are not kept in isolation due to the actions of others. This list could be made more accessible and user-friendly, but we are not recommending its elimination. Many countries around the world have individuals and entities on this list, so it is not unique to Burma, and it serves a very important function.

However, our long-term vision must take into account those sanctions and restrictions which are unique to Burma. We need an open and honest dialogue in which we can discuss the efficacy and utility of some of the remaining sanctions and their impact on the Burmese people.

From the Chamber's discussions on the ground, it is clear that a U.S. presence is welcomed in Burma and in a sense, the U.S. is pushing on an open door. A U.S. commercial presence will serve our economic, political, and strategic interests, and will help the people of Burma.

The past 20 years have been a dark chapter in Burma's history. We believe that Burma is trying to turn the page, and the United States must support this process. Deepening our engagement with that country is an important way to do so.

PREPARED STATEMENT OF ALEXANDER FELDMAN, PRESIDENT, US-ASEAN BUSINESS COUNCIL AND FRANCES ZWENIG, PRESIDENT, US-ASEAN BUSINESS COUNCIL INSTITUTE, INC.

The US-ASEAN Business Council and the US-ASEAN Business Council Institute, Inc are pleased to have the opportunity to submit a statement for the record to the Senate Committee on Foreign Relations in connection with today's hearing on the nomination of Derek Mitchell to be United States Ambassador to Myanmar.

The US-ASEAN Business Council is the premiere advocacy organization for U.S. corporations operating within the dynamic Association of Southeast Asian Nations (ASEAN). ASEAN represents nearly 600 million people and a combined GDP of USD \$1.5 trillion across Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam. The Council's members include the largest U.S. companies working in ASEAN, and range from newcomers to the region to companies that have been working in Southeast Asia for over 100 years.

The US-ASEAN Business Council Institute, Inc is a charitable organization whose purpose is to enrich the opportunities for strengthened and deeper engagement by U.S. companies in ASEAN through a variety of educational activities and capacity-building. Broadly defined, this mission also supports humanitarian activities and community engagement to help improve the lives of people in ASEAN where the Council's companies work; support for programs to preserve and expand knowledge about the rich cultural and art heritage of the region in the U.S. and of the U.S. in ASEAN; and other initiatives in the fields of education, governance and rule of law, health, the environment, trade, commerce and investment that the Council's members may propose from time to time.

The Council and its members have been very pleased to see the forward motion in the reform process that has taken place in Myanmar over the past year. This reform has been not only political, as Myanmar has held elections which have included key opposition groups and has expanded the political space for open, sometimes critical dialogue, but also economic, as Myanmar has taken the long-overdue step of allowing a managed floating exchange rate, invited in foreign investment, and begun the process of privatizing state-owned enterprises. President Thein Sein has promised further reforms, and Myanmar has indicated it will continue the process of releasing political prisoners.

These reforms are not irreversible, and need support from all corners in order to be successful. The presence of a U.S. Ambassador will make a substantial difference in the amount of influence the United States can wield in encouraging further reforms.

The Council supports without qualification the confirmation of Derek Mitchell for the position of U.S. Ambassador to the Union of Burma, or Union of Myanmar. Ambassador Mitchell brings experience from his years of government service in the Congress and in the executive branch which will prove invaluable in this position, and is very well qualified for the job. He has demonstrated his commitment and energy to finding a way forward in this rapidly changing environment, and has the temperament, ability, and insight which this challenging position will require. The Council has long believed that the cause of improving the lives of Burmese people was ill-served by the lack of an American Ambassador to Myanmar and the subsequent U.S. insistence that Myanmar downgrade its diplomatic representation in Washington, DC. Levels of representation matter and impact the quality of dialogue, access to key decisionmakers, and quality of information about one another's country. With representation restored to normal levels, we hope the guidance to the Embassy to provide the full array of assistance to American individuals and companies seeking to undertake projects with civil society and business with business and government partners will be adopted. Currently, as this committee knows, the Embassy's ability to provide any assistance to individuals or companies seeking to do business is constrained by State Department policy.

U.S. companies bring best practices in governance, corporate responsibility, safety and environmental standards. We believe they can make an important contribution to the new legal and fiscal frameworks now under discussion, but they must have access to good information as the insights that an active diplomatic presence can provide. We urge the State Department to update their guidance to the Embassy to be consistent with the May 17 announcement by Secretary Clinton that the United States is suspending sanctions on new investment and financial transactions with Myanmar.

The Council is also very encouraged that the administration has decided to suspend sanctions and allow economic engagement. The Council has long believed that engagement can be more effective than isolation in effecting positive change.

The next vital step will be the issuing of a general license that will allow U.S. business to begin to work in Myanmar. Secretary Clinton's May 17 announcement of the suspension of certain sanctions has emboldened reformers, but it must be backed up with action. It is essential that a general license authorizing new investments in and a waiver authorizing financial transactions with Myanmar are issued soon, and that both apply equally across all industry sectors.

Currently, potential U.S. investors remain in limbo, unable even to perform basic research functions while their competitors move forward aggressively. A June 19

article by the AFP indicated that Myanmar has signed oil and gas deals with numerous companies from Asia and Europe, and large delegations of foreign companies have made numerous visits. Each day puts U.S. companies further behind.

Major U.S. companies, including iconic brands like council members the Coca-Cola Company and GE, have indicated that they intend to pursue opportunities in Myanmar once they are allowed.

A key example of the level of business interest in Myanmar is the excitement surrounding the Council's first Business Mission to Myanmar, which will take place in July. Despite the challenges that will face companies looking to do business in Myanmar, 37 leading U.S. companies have agreed to join the mission. The companies participating in the mission include 5 of the Fortune 10, and represent all sectors. Top firms in health care, manufacturing, infrastructure, financial services, energy, and ICT are interested in the opportunities offered by the opening up of Myanmar's economy.

During their visit to Yangon, the delegates will meet with a wide spectrum of the key figures in Myanmar's evolution: key government ministers, members of opposition groups like the NLD, NDF, and the 88'ers, and members of civil society. They will participate in meetings with U.S. Government officials who will travel to Myanmar as part of the State Department delegation which will also visit Myanmar. The business mission will include a panel of NGOs who will describe the conditions they face in operating on the ground, and share their knowledge and experience on the best way for U.S. companies to help move Myanmar forward. Those NGOs will include: PACT, Proximity Designs, Marie Stopes International, and World Vision.

Connecting Burmese citizens to the wider world of global business will be a vital step in helping them build the civil society that will enable them to move Myanmar from the list of failed states into being a member of ASEAN's success story. The Council encourages maintaining, regularly updating, and providing easy to use access to the Specially Designated Nationals list as a way to ensure that business dealings do not enrich those parties responsible for Myanmar's decades of suffering, and that those honest entrepreneurs seeking a way to connect with the outside world are not kept in isolation due to the actions of others.

U.S. companies can create the jobs and economic base needed for the government to jump-start the economy and meet the expectations of the people. U.S. companies bring with them respect for the rule of law, corporate governance structures including adherence to the Foreign Corrupt Practices Act, intellectual property rights, and labor standards unmatched in the world. U.S. companies can and do provide capacity-building, training, and respect for the environment, as well as projects to engage with communities where they work to a substantially greater degree than most of their competitors from other nations. These Corporate Social Responsibility projects include globally successful education, public health, and environmental programs. U.S. companies look forward to vastly expanding their presence in Myanmar.

These are programs which are already clearly reported and documented, and which major U.S. companies view as part of their competitive advantage. Burdensome reporting requirements surrounding CSR work in Myanmar will have the effect of making it more difficult for companies to bring in existing successful programs, and will act as a barrier to entry for small and medium-sized enterprises.

In addition to the efforts of its members, the US-ASEAN Business Council Institute performs a variety of CSR functions. Those efforts have included facilitating and supporting flood relief in Thailand and will include expanding the Council's training program for small and medium-sized enterprises throughout ASEAN.

Myanmar has already been the location of one of the Council's key CSR efforts: the restoration of the Musmeah Yeshua Synagogue. Rangoon was once the home of a thriving Jewish community consisting primarily of Jews from Iraq, Iran, and India. Musmeah Yeshua Synagogue was built in 1893-1896 to serve the growing Jewish population, which, at its peak, numbered about 2,500 individuals. During World War II, and, in the years following, most of the Jews in Burma fled to other countries. The Burmese Government's nationalization of businesses in 1969 caused further migration.

As a result of the community's dwindling numbers, the synagogue has limited funds to support itself. Even before the May 2008 cyclone, the building was in desperate need of restoration and the historic Jewish cemetery nearby was slated to be destroyed by the city. Cyclone Nargis only made the situation more desperate. This historic building still serves as the religious center for Jews visiting Myanmar. Without restoration and maintenance, this unique piece of history would have been lost.

Moses Samuels and his family are among the few Jews in Myanmar. Moses is the Trustee of Musmeah Yeshua Synagogue. Cyclone Nargis rocked the beautiful syna-

gogue, shattered its windows, and destroyed its roof. Without assistance, the Jewish community of Myanmar would have been unable to restore and maintain its place of worship. Even with its own Nargis damage, the Jewish community—led by Moses's son Sammy—organized several aid missions to help their fellow Burmese in the hard-hit Delta.

The US-ASEAN Business Council Institute, Inc., the US-ASEAN Business Council's 501(c)(3) tax exempt organization, obtained a license from the United States Department of the Treasury's Office of Foreign Assets Control (OFAC) to raise funds for the maintenance and restoration of Musmeah Yeshua Synagogue in Yangon, Myanmar. With the OFAC license, the Council achieved a number of things:

- Raised funds to complete restoration and necessary maintenance of the synagogue;
- Raised funds for the synagogue's monthly expenses consisting of utilities, salaries for workers, and various miscellaneous expenses;
- Raised funds for the maintenance of 700 historic graves and for the construction and maintenance of the new cemetery.

It is unquestionable that U.S. companies are at a disadvantage to foreign competitors who are already operating in Myanmar. Jobs that could be created in the U.S. are instead going to other nations. We hope this testimony will help to show some of the vital and necessary CSR projects that the Burmese people will be denied by the absence of U.S. companies.

We believe Derek Mitchell has a firm grasp of these issues and the importance of welcoming Myanmar back into the global fold.

We respectfully urge his swift confirmation.

